

House Bill 605  
February 19, 2009  
Presented by Bob Lane  
House Fish, Wildlife and Parks Committee

EXHIBIT 4  
DATE 2-19-09  
HB 605

Mr. Chairman and committee members. I am Bob Lane, Chief Legal Counsel for Montana Department of Fish, Wildlife & Parks (FWP).

I am here today to provide the committee with information regarding HB 605. Before addressing the bill directly, I want to provide some background on the Pittman-Robertson (PR) and Wallop-Breaux (WB) federal aid programs.

The federal government collects excise taxes on the manufacture of certain hunting, fishing and boating equipment at the wholesale level. These funds are apportioned annually to the states through their game and fish agencies under the PR and WB programs for conservation and restoration of wildlife and fish, respectively. Apportionments are based on a complex formula that includes the total area of the state and the number of hunting and fishing licenses sold in the state each year, compared to national totals for area and license sales. Montana's apportionments in recent years have been about \$9 million for PR and \$9.6 million for WB.

To access these funds, FWP must submit an Application for Federal Assistance (AFA) that outlines, in detail, programs or projects the department will undertake using the funds. The type of programs and projects that are eligible for these grants are limited, and each state must agree to restrict use of all hunting and fishing license dollars for the administration of its fish and wildlife agency in order to be eligible to participate in the grant programs. Once an AFA is approved, FWP can initiate work on the project and subsequently request reimbursement from the USFWS for up to 75% of eligible project costs. The balance of costs must be paid from non-federal "matching" sources.

All project expenditures are subject to periodic audits by the federal government (USDOJ – Office of Inspector General), and if the project involves the purchase of land or the construction of facilities, the auditors also include field inspections of the land or facilities to ensure that the rigid terms of the grant programs continue to be met. If an audit reveals any inappropriate use of funds, land or facilities, FWP may be required to return grant funds to the USFWS, and can lose future access to both grant programs.

From time to time, there has been discussion at the federal level about providing an apportionment of these funds for Tribes. During the 2007 session, FWP fully supported the passage of SJ-18, which urged Congress to pass legislation that would create a separate Tribal apportionment program using the PR/WB model. To date, however, state game and fish agencies remain the only entities that can apply for and receive PR and WB funds.

The first effort to provide Tribes' with access to PR and WB funds in Montana was HB 107, introduced by Rep. Eggers during the 1999 session. Rep. Eggers' proposed transferring federal aid funds directly to the Tribes for their use, but this approach was neither viable or legal. During the 2001 session, Rep. Eggers reintroduced HB 107, and worked with FWP to revise his bill to authorize a sub-grant program for tribes using up to 7% of the state's apportionment. This approach might have worked, provided that the tribes agreed to meet all of the federal requirements; provide the required non-federal match, document appropriate use of the funds, and allow auditing of project expenditures along with future use of lands or facilities.

The amended version of HB 107 passed the House in 2001; however, the Senate Fish and Game committee determined that statutory language was not necessary in order for FWP to establish sub-grants with tribes, and decided not to pass HB 107. The Senate committee subsequently directed FWP to work with tribes to implement a program in the spirit of Rep. Eggers' bill.

In response to this direction, FWP contacted all tribes in the state and contracted with a former FWP employee familiar with Montana's tribes to identify potential projects and facilitate agreements and sub-grants. In spite of considerable effort, no PR and WB sub-grants were ever developed. Among the roadblocks to implementing PR and WB sub-grants are the Federal limitations on use of PR and WB funds, the requirement for non-federal matching funds, and some tribes' reluctance to agree to the federal audit requirements. One limitation is that all Montana citizens must have equal access to the benefits of funded projects. Another is that the fish and wildlife agency of the state, FWP, must be the entity making the decision on the priority of all projects. These conditions are mandated by the U.S. Fish and Wildlife Service, not by FWP. As sovereigns themselves, tribes cannot easily agree to these conditions while maintaining their sovereignty.

FWP has had limited success issuing sub-grants to tribes under the State Wildlife Grant (SWG) program. Similar in many ways to PR and WB, SWG provides funding to states for conservation of all species of concern, not just game or sport fish. Over \$100,000 has been allocated to tribal projects related to swift fox and grizzly bears with the Blackfeet; loons with the Salish-Kootenai, and a proposed grant to develop a reservation wildlife management plan with the Ft. Belknap tribe. One reason SWG grants are easier to implement is that, unlike PR and WB grants, SWG grants do not require equal access to benefits for tribal and non-tribal members. In addition, in several cases private entities or the University system has provided the required non-federal matching funds on behalf of the tribes.

The interest in SWG subgrants declined sharply beginning in 2003 after Congress established two Tribal Wildlife Grant programs that provided funding directly to tribes. These programs do not have the same matching requirements that states must meet with SWG, PR or WB, and several Montana tribes have received allocations of Tribal Wildlife Grant funds since that time. Based on reports issued by the USFWS, grant awards for Montana tribes through 2008 total in excess of \$2.9 million.

During the 2005 session, Rep. Jonathan Windy Boy introduced HB 378, which essentially mirrored the language of HB 107 from 2001. The House Fish Wildlife & Parks Committee tabled HB 378 because they did not believe FWP and tribes would have any greater success in implementing subgrants than in the past.

SB 334, introduced during the 2007 session by Senator Pease, was identical to HB 378 from the 2005 session. It died in committee for much the same reasons as the earlier bills. HB 605, introduced by Rep. Shannon Augare during this session, mirrors the language in these past bills.

As we testified in 2001, 2005, and 2007, as long as all federal requirements can be met, we have no objection to legislative direction towards continued efforts to provide subgrants. It is important for all parties to understand, however, that the strict federal requirements that apply to PR and WB grants will continue to make it extremely difficult to implement this concept. Finally, FWP can provide subgrants to tribes without this legislation if all requirements are met.

Thank you.

## 1 SENATE JOINT RESOLUTION NO. 18

2 INTRODUCED BY PEASE

3

4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF  
5 MONTANA URGING CONGRESS TO ALLOCATE A PORTION OF FEDERAL EXCISE TAXES FOR TRIBAL  
6 WILDLIFE AND FISH MANAGEMENT PROGRAMS.

7

8 WHEREAS, tribal and nontribal recreationists of Montana, whether on or off of reservations, pay federal  
9 excise taxes on sporting goods; and

10 WHEREAS, a portion of these federal excise taxes is apportioned to the state to be administered by the  
11 Department of Fish, Wildlife, and Parks and is earmarked for purposes of wildlife and fish management in  
12 Montana; and

13 WHEREAS, the distribution of funds from the total apportionment is based on a formulated percentage,  
14 factoring in licensed resource users, demographic population, land base, and water area, including tribal  
15 populations, lands, and waters, yet none of these funds are currently apportioned to tribal governments; and

16 WHEREAS, the various tribal governments of Montana also maintain programs of wildlife and fish  
17 management that benefit the state wildlife and fish resources, and wildlife and fish management on reservations  
18 could be enhanced if Montana tribes were to receive part of the tax revenue for tribal management programs;  
19 and

20 WHEREAS, as a matter of equity, Montana tribes are entitled to a portion of the federal excise tax  
21 revenue on sporting goods for tribal wildlife and fish management programs.

22

23 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE  
24 STATE OF MONTANA:

25 (1) That the United States Congress pass legislation that would allocate a portion of federal excise taxes  
26 for tribal wildlife and fish management programs in the same manner that the taxes are allocated to the states.

27 (2) That the Secretary of State send copies of this resolution to the Montana Congressional Delegation,  
28 the Secretary of the U.S. Department of the Interior, and to each tribal government located on the seven Montana  
29 reservations and to the Little Shell Chippewa tribe.

30

- END -

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## Detailed Bill Information



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**Bill Draft Number:** LC2549    **Current Bill Text:** [HTML](#) [PDF](#) (w/line numbers) **NEW**

**Bill Type - Number:** SJ 18

**Short Title:** Urge Congress to allocate federal excise taxes to tribes

**Primary Sponsor:** Gerald Pease

### Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 41

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Action - Most Recent First	Date	Votes Yes	Votes No	Committee
S) Filed with Secretary of State	04/24/2007			
H) Signed by Speaker	04/24/2007			
S) Signed by President	04/18/2007			
S) Returned from Enrolling	04/17/2007			
C) Sent to Printing	04/17/2007			
S) Sent to Enrolling	04/16/2007			
H) Returned to Senate	04/16/2007			
H) 3rd Reading Concurred	04/16/2007	58	42	
H) Scheduled for 3rd Reading	04/16/2007			
C) Sent to Printing	04/14/2007			
H) 2nd Reading Concurred	04/14/2007	61	39	
H) Scheduled for 2nd Reading	04/14/2007			
H) Committee Report--Bill Concurred	04/04/2007			(H) Fish, Wildlife and Parks
H) Committee Executive Action--Bill Concurred	04/04/2007	10	9	(H) Fish, Wildlife and Parks
H) Hearing	03/27/2007			(H) Fish, Wildlife and Parks
H) Referred to Committee	03/13/2007			(H) Fish, Wildlife and Parks
H) First Reading	03/13/2007			
S) Transmitted to House	02/26/2007			
S) 3rd Reading Passed	02/26/2007	39	11	
S) Scheduled for 3rd Reading	02/26/2007			
S) Scheduled for 3rd Reading	02/26/2007			